

Appl. No. 10/603,126
Amdt. dated February 22, 2005
Reply to Office Action of December 17, 2004

Amendments to the Drawings

The attached replacement sheets include changes made in Figs. 1, 3 and 5 and replace the original sheets containing those drawings. In Fig. 1, element 156 has been changed to 150 and previously omitted element 167 has been added. In Fig. 3, previously omitted element 166 has been added. In Fig. 5, previously omitted element 168 has been added.

REMARKS

Original claims 1-15 are being prosecuted in this application, and original claims 16-20 are withdrawn from further consideration as being drawn to a non-elected invention. Claims 1, 2 and 10 are amended. Claims 5, 7-9, and 11-15 are canceled. New claims 21-27 are added.

Election/Restriction

Restriction between the breathable footwear of claims 1-15 and the method of manufacturing breathable footwear of claims 16-20 is required. Applicant affirms the election without traverse to prosecute the invention of claims 1-15, and the withdrawal of claims 16-20 from consideration in this application. Applicant retains the right to present withdrawn claims in a divisional application.

Claim Rejections Under 35 USC §112

Claims 2-4, 11 and 14-15 are rejected as being indefinite because the phrase “liquid conductor” is allegedly vague and indefinite. Claim 2, upon which claims 3 and 4 are dependent, has been amended to define “liquid conductor” as a “raised structure that can divert liquid falling from above the footwear piece from entering through the ventilator”. Support for this amendment is found in the specification, e.g. at page 9, lines 1-2. Applicant respectfully submits that the amended claims avoid the indefiniteness rejection.

Claim Rejections Under 35 USC §102

Claims 1-6 and 11-15 are rejected as being anticipated by Seidel et al U.S. Pat. No. 4,476,600 (“Seidel”). Seidel discloses a one-piece plastic shoe comprising a lower part with a top surface on which the foot bears and a bottom surface enveloping an outsole and a heel, and an upper part having ventilating openings in a substantially vertical lateral area thereof. With respect to amended claim 1, Seidel does not teach a pivoting strap section or ventilators that extend up a majority of the height of the vertical portion. Rejected claims 2-6 are dependent on

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amended claim 1 and therefore also contain these limitations. Rejected claims 11-16 are withdrawn from consideration in this application. In light of the above, reconsideration and withdrawal of the rejection is respectfully requested.

Claim Rejections under 35 USC §103

Claims 7-9 are rejected under 35 USC §103 as being obvious over Seidel. This rejection has been obviated because Claims 7-9 have been canceled.

Claim 10 is rejected as being obvious over Seidel in view of Aguerre U.S. Pat. No. 6,237,249 ("Aguerre"). Aguerre is cited by the Examiner to show footwear having a support base with a raised pattern where the foot contacts the support base. In fact, Aguerre describes a "heel bumper 116" that provides support to the heel of the wearer and helps maintain the footwear in position (see, for example, col. 4, lines 55-60; and Figs. 1-4, 7 and 15). This element is analogous to applicant's element 160, e.g. as shown in Fig. 1 of the present application, which was not intended by applicant to be the subject of claim 10. Rather, applicant intended Claim 10 to describe the raised pattern that extends throughout the surface where a foot contacts the support base, as shown in Fig. 3. Fig. 3 has been amended to assign reference number 166 to this element and the description in paragraph [0031] has been amended to be consistent with this change. Since this element is shown in original Fig. 3, it does not constitute new matter. Claim 10 has been amended to more particularly point out this aspect of the invention. As discussed above, Seidel does not anticipate or reasonably suggest this limitation, and the combination of Aguerre, which only teaches a heel bumper, adds nothing to the teaching of Seidel that would make this limitation obvious. Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

New Claims

New dependent claims 21-27 have been added to define preferred embodiments of the invention. Support for the subject matter of new claims 21 and 22 is found in paragraph [0030] of the specification. Support for the subject matter of new claim 23 is found at page 8, paragraph

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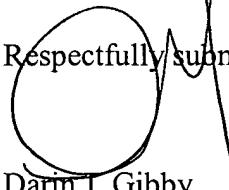
[0036]. Support for the subject matter of new claim 24 is found in original Figs. 1 and 5, which have been amended to assign reference numbers 167 and 168 to the elements shown therein. Paragraph [0031] has been amended to describe these elements in more detail. Support for the subject matter of new claim 25 is found in original Fig. 3, which has been amended to assign reference number 166 to the element shown therein. Paragraph [0031] has been amended to describe this subject matter in more detail. Support for the subject matter of new claim 26 is found in paragraph [0029] of the specification.

New independent claim 27 defines a further embodiment of the present invention incorporating a combination of limitations previously discussed above. None of the prior art of record, alone or in combination, teaches or suggests the footwear piece of claim 27.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

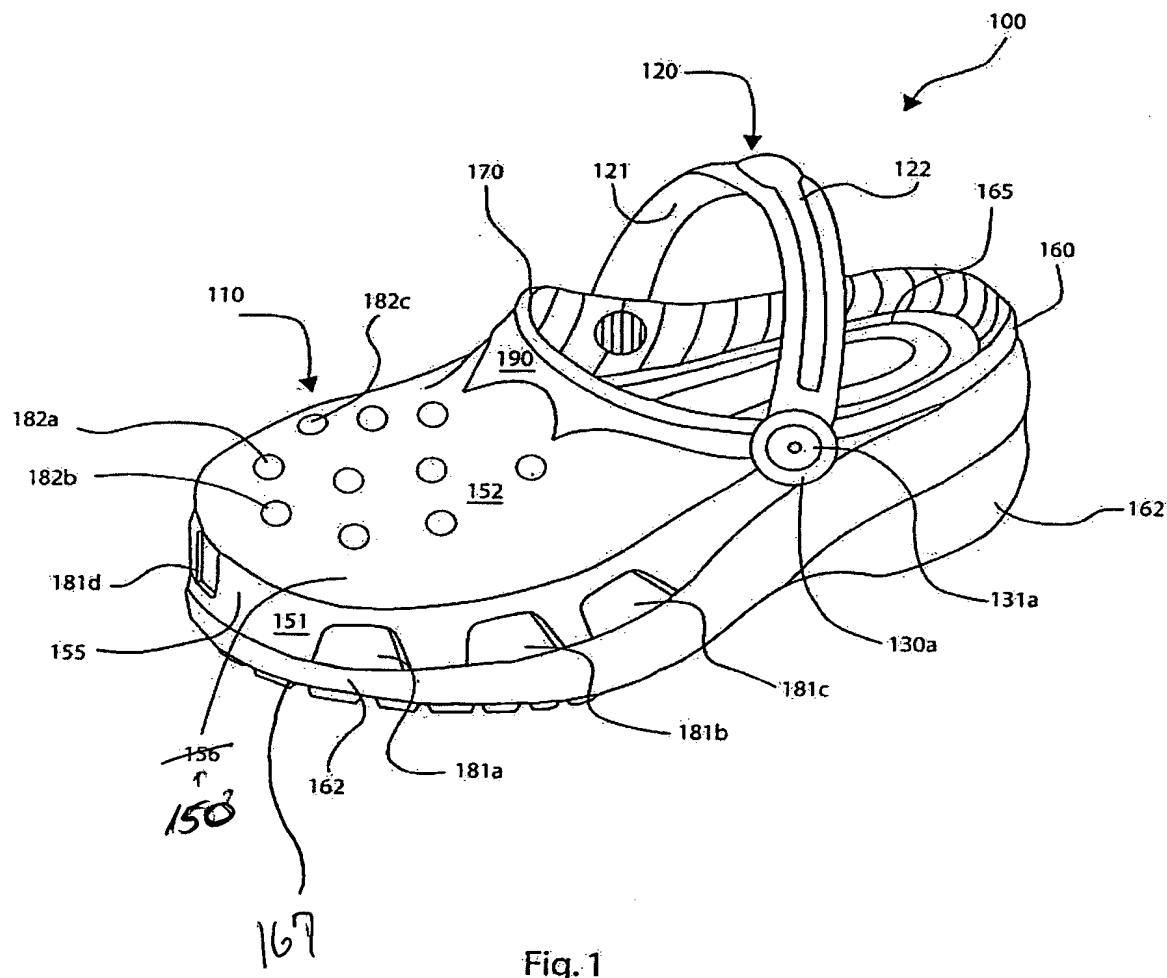
If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

Darin J. Gibby
Reg. No. 38,464

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: (303) 571-4000
Fax: (303) 571-4321
MCM/DJG/cl
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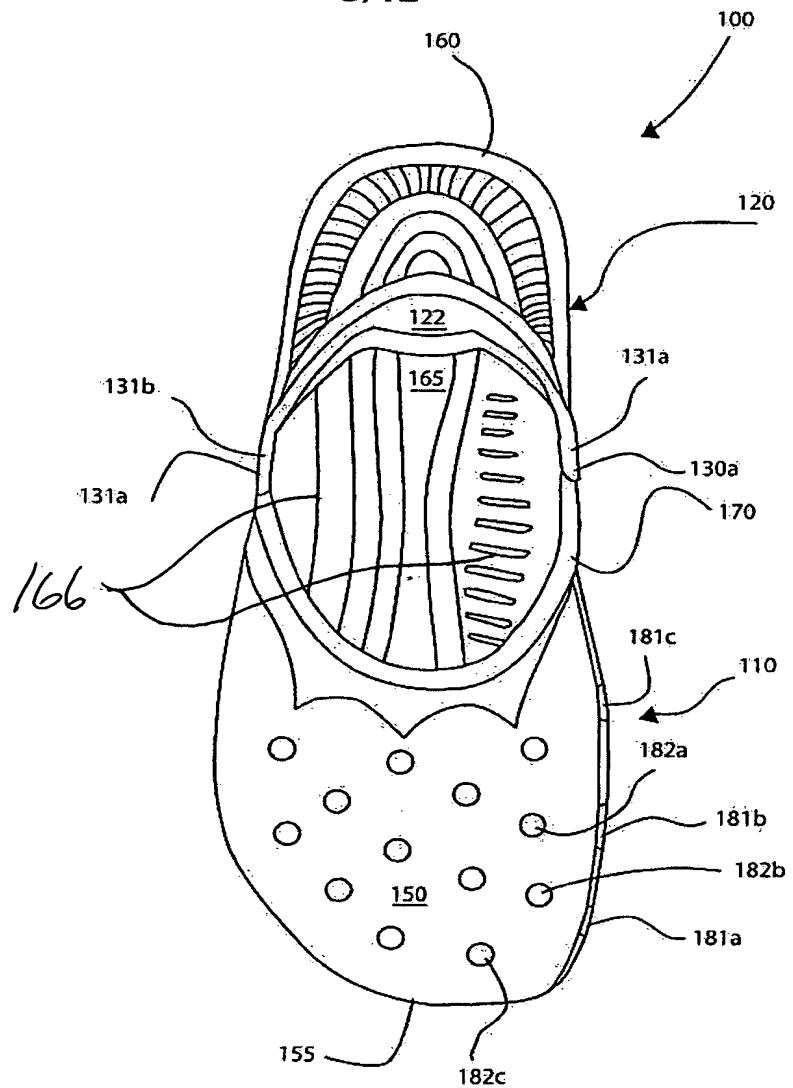


Fig. 3

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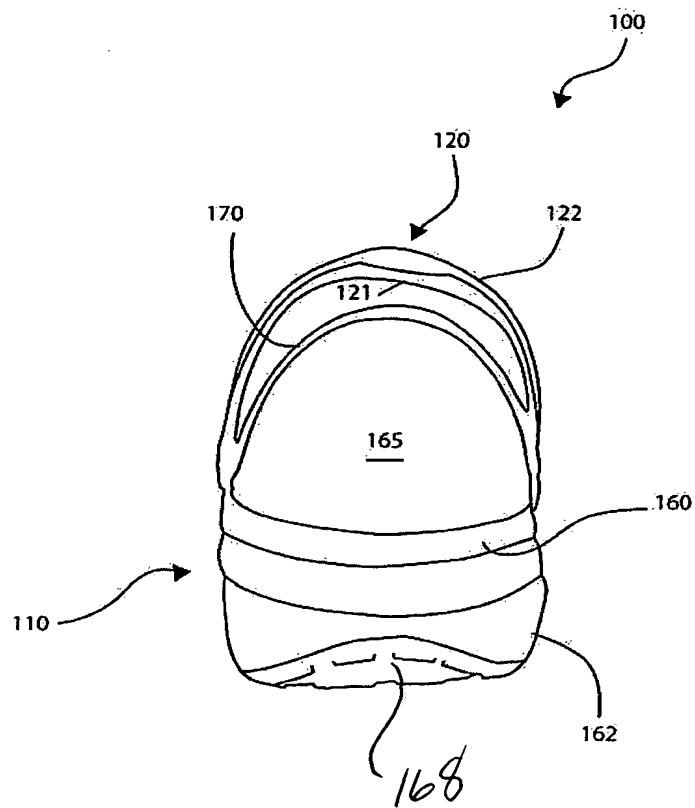


Fig. 5